IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6452 OF 2006

Miss Piroza Nowroji Deboo
since deceased
Mrs. Homai Faredoon Modi ..Petitioner
Vs.
Noshir Phiroze Khambatta ..Respondent

Mr. A.K. Abhyankar i/by Mr. R.S. Patil for petitioner.

Mr. Bharat Joshi for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : March 29, 2007.

P.C.:

1. Heard the learned counsel for the respective parties. This petition under Article 227 of the Constitution arises from the order dated 7/8/2006 passed by the learned Judge of the Small Causes Court at Mumbai in Interim Notice Nos.1156/06 and 2615/05 in RAD Suit No.248 of 1982 and L.E. & C. Suit No.453/478 of 2001.

2. There is no dispute that RAD Suit No.248 of 1982 has been filed by the present respondent and L.E.

& C. Suit No.453/478 of 2001 has been filed by the present petitioner. Both the parties are defendants in the respective suits.

3. In Writ Petition No. 7795 of 2005 filed by the present respondent, this court by its order dated 3/4/2006 while rejecting the petition, recorded the statement made by the learned counsel for the respondent that he would not enter the witness box and all the evidence in rebuttal is intended to be led is in respect of documents and other witnesses only to the confined issues relating to the deposit of rent in the bank account and leave and licence, and on the basis of the said statement this court observed that if the evidence is allowed to be led in rebuttal by the concerned parties, the petitioner would have every opportunity to cross examine the witnesses and challenge the documents which may be produced by the respondent. When the present petitioner took out Interim Notice No.1156 of 2006, the same was discharged by the learned Judge of the Small Causes Court at Mumbai on 7/8/2006 by referring to the observations made by this court in the order dated

3/4/2006, namely, the defendant in L.E. & C. suit has every right to produce document in rebuttal of evidence through his witness.

4. The petitioner by the additional affidavit dated 21/3/2007 has placed on record a copy of the order dated 5/2/2003 passed in L.E. & C. Suit No.453/478 of 2001 framing issues and also a copy of the order passed by the Supreme Court on 19/2/2007 in Civil Appeal No. 839 of 2007. The order dated 3/4/2006 was under challenge in Civil Appeal No.839 of 2007 before the Supreme Court. The following observations made by the Supreme Court in the order dated 19/2/2007 are relevant:-

> ". The defendant in L.E. & C. Suit No.453/478 of 2001 shall be permitted by the trial court to lead evidence in rebuttal on issue Nos.1, 2 and 3 which are mentioned at page 84 of the paper book containing the counter affidavit in S.L.P. (CC) No.14707 of 2006. However, he will not be permitted to lead evidence in rebuttal in respect of Issue

Nos.4 and 5. The impugned order is modified to that extent."

5. By the above said order of the Supreme Court, the present respondent's right to lead evidence in rebuttal is limited only on issue nos.1,2 and 3, as per the issues framed on 5/2/2003 and it has been further stated that he will not be permitted to lead evidence in rebuttal in respect of issue nos.4 and 5. With this order of the Supreme Court the Interim Notices No.1156/06 and 2615/05 taken out by the present petitioner stand allowed and in any case the learned counsel for the respondent submitted in fairness that he does not intend to produce any documents in rebuttal and he bound by the directions set out in the order dated 19/2/2007 passed by the Supreme Court.

6. With the above clarifications and in view of the order passed by the Supreme Court on 19/2/2007, the petition is disposed off.

(B.H. Marlapalle,J.)